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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,561	01/05/2004	Garret F. Geer	62870B	2405

109 7590 05/10/2006

THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION
P. O. BOX 1967
MIDLAND, MI 48641-1967

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/751,561	Applicant(s) GEER ET AL.	
	Examiner Yvonne M. Horton	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 23-26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-22 is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

The request filed on 2/22/06 for a Continued Examination Application (RCE) under 37 CFR 1.114 based on parent Application No. 10/751,561 is acceptable and an RCE has been established. An action on the RCE follows.

Claim Objections

Claim 1 is objected to because of the following informalities: In claim 1, there are "(a)" and "(b)" options. The examiner believes that there should be a --(c)-- option place just after the "or" in line 15 of claim 1. Appropriate correction is required.

Claims 14 and 23-26 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple-dependent claim. Claims 23-26 have not been considered on the merits.

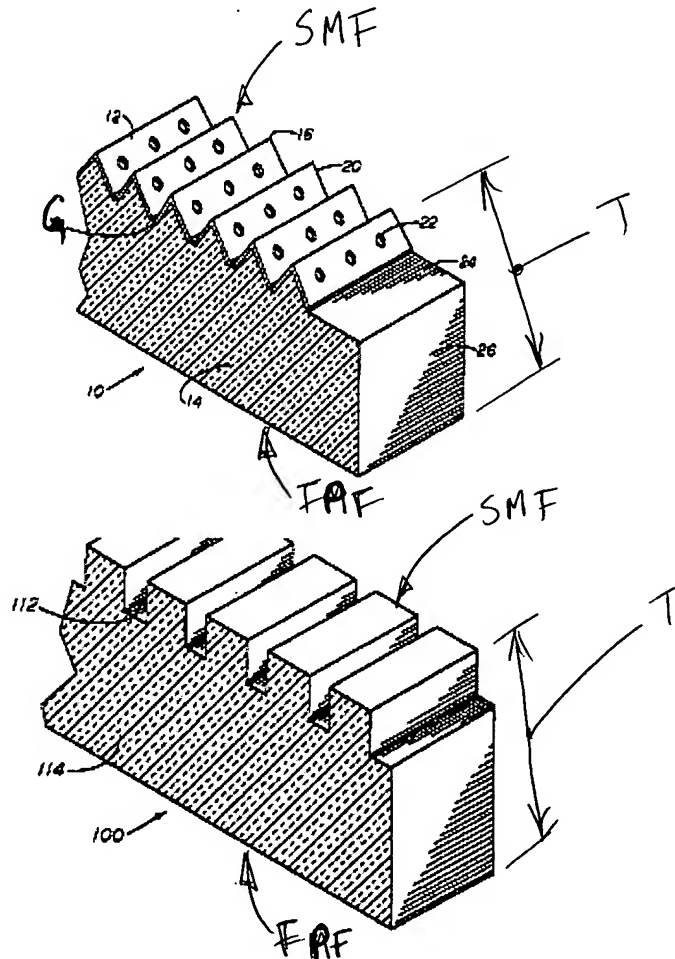
Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,867,956 to GREGORY, Jr. et al. in view of either US Patent #6,679,018 to GEORGEAU et al. or US Patent #3,879,508 to GILBERT. GREGORY, Jr. et al. discloses the use of a unitary "rectangular" shaped roof rafter vent and insulation assembly including a generally flexible, column 2, line 3, foam body (14,114) having a first planar surface (FPF) spaced from a second major surface (SMF) by a thickness (T); wherein the second major surface (SMF) includes at least two grooves (G,112)

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such that the insulation assembly is sufficiently flexible to seal off the major surfaces (FPF,SMF) from fluid communication, column 2, line 41-44, see below.



GREGORY, Jr. et al. discloses the basic claimed assembly except for explicitly detailing that his foam insulation material is polyolefin. Both GEORGEAU et al. and GILBERT teaches the use of a polyolefin foam material (1,14); respectively, (GEORGEAU et al. column 4, line 22 and GILBERT column 3, line 2) for use in a roof structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the insulation material of GREGORY, Jr. et al. out of the polyolefin materials, as taught by either GEORGEAU et al. or GILBERT, in order to ensure that

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the material is sufficiently flexible for installation while also having a material that is waterproof. For instance a polyolefin material would be more appropriate on sloped roofs as opposed to a flat roof because it is known for its ability to be flexible. Maybe perhaps polyolefin is more sufficient for use in environments that have excessive water exposure as opposed to other materials that deteriorate with over exposure to water. In reference to claims 2 and 3, the materials of both GEORGEAU et al. and GILBERT are molded extrusions obviously having an olefin homo-polymer. Regarding claim 4, GREGORY, Jr. et al. discloses the use of a polystyrene material, column 2, line 36. In reference to claims 5-7 and 9-11, GREGORY, Jr. et al., as modified by either GEORGEAU et al. or GILBERT, does not disclose the specified insulation thickness or degree of bending of the insulation; however, it too would have been an obvious matter of design choice to select the insulation thickness and degree of insulation to depend upon the use intended as an obvious matter of design choice. Also, the degree of flexibility of the insulation depends somewhat on the extent of select product thickness. Regarding claim 8, in GREGORY, Jr. et al. it is not clear if the insulation thickness (T) is less than or equal to the depth between the rafter and the roof deck; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the thickness of the insulation be at least less than the depth of the rafters. Otherwise, the roof decking would not rest properly against the rafters. In reference to claims 12 and 13, the second major surface (SMF) includes grooves (G,112) that are extruded/molded, column 2, lines 27-31. Regarding claim 14,

GREGORY, Jr. et al. discloses the use of a film/facer (12) attached to the second major face (SMF) of the insulation body (14,114).

Allowable Subject Matter

Claims 15-22 are allowable.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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